

MAR 4 - 2019

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

Office of the Secretary

In re )  
 )  
GLR Southern California, LLC )  
 )  
Application for Permit ) File No. 325-NEW-20180614-00001  
for Delivery of )  
Programming to )  
Mexican Station XEWW-AM. )  
Rosarita, Baja California Norte, Mexico )  
 ) DOCKET FILE COPY ORIGINAL

To: Secretary  
Attn.: Chief, International Bureau

**OPPOSITION TO REQUEST FOR EXTENSION OF TIME**

**I. Introduction**

Chinese Sound of Oriental and West Heritage ("CSO"), licensee of KQEV-LP, Walnut, California, by its attorneys, pursuant to Section 1.45 of the Commission's Rules, 47 CFR 1.45, hereby files this Opposition to the letter requesting an extension of time ("Request for Extension of Time"), filed March 1, 2019 by GLR Southern California LLC ("GLR") and its parent company, H&H Group USA LLC ("H&H").

It is rare among practitioners before the Commission to oppose a request for extension of time.<sup>1</sup> However, the facts of this case are so unique and so egregious. CSO must oppose this Request for Extension of Time. GLR and H&H are operating in a flagrantly unlawful manner.

<sup>1</sup> Members of the bar recognize that client unavailability and/or the press of other commitments may necessitate the need to file a request for extension of time. As such difficulties occur for most practitioners from time-to-time, we often extend this courtesy without objection. Such a courtesy is not warranted here as it will extend the time during which CSO is suffering irreparable injury, as is more fully set out below.

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They have achieved all that their Permit Application was filed to accomplish, even though that Application has not been granted: (1) H&H has consummated the purchase of GLR and thus taken ownership and control of the Permit without authority from the Commission, (2) GLR and H&H have been operating pursuant to a Special Temporary Authority ("STA") that was unlawfully issued, and (3) GLR and H&H have been delivering Phoenix Television<sup>2</sup> programming to XEWW-AM for broadcast into the United States since July 25, 2018 – almost eight months. Now, H&H and GLR seek to continue this unlawful operation by slowing the pace of the Commission's investigation of this situation. Such a slowdown is unwarranted and damaging to CSO. The Commission should deny the Request for Extension of Time. However, if the Commission grants the Request for Extension of Time, it should not extend the STA, as set out below.

## **II. The Request for Extension of Time Should be Denied**

On February 15, 2019, the Commission issued an Information Request to GLR and H&H and requested that they respond in 30 days. The Information Request seeks information about the relationships between H&H, GLR, and Phoenix Television, and seeks details about the operation of XEWW-AM. The information requested is necessary for the Commission to properly review the issues before it in this proceeding. H&H and GLR begin their Request for Extension of Time by noting they received the Information Request by U.S. Mail on February 25, 2019, ten days after the date on the letter.<sup>3</sup> H&H and GLR then attempt to demonstrate good

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<sup>2</sup> Phoenix Television is used to describe individually and collectively the group of entities controlled by Phoenix Media Investment (Holdings) Limited. H&H and GLR have stated that they have contracted for programming from one of these entities, Phoenix Radio LLC. Response to Unauthorized Filings, filed September 24, 2018, Exhibit A at 1.

<sup>3</sup> The letter was posted on the Commission's website on February 15, 2019. H&H and GLR do not state whether they obtained a copy of the Information Request from the website before they

cause for a requested extension of time for three weeks, until April 8, 2019. The requested three-week extension appears excessive, given that the alleged mail delay was 11 days less than the three weeks requested.

However, H&H and GLR go much further than merely asking for an extension of time. They have also advised the Commission that "we would like to discuss ways to clarify (and possibly narrow) the scope of the Request." This clearly is an inappropriate request. This is a contested proceeding. Any "discussion" between H&H, GLR and the Commission must include CSO.

Additionally, there is nothing to "discuss." The Information Request is clear and explicit. Either the information requested exists or it does not. H&H and GLR provide examples of documents that they propose to provide and seek "clarification" of certain other documents requested. The production of documents should proceed on the time schedule set by the Commission. If H&H and GLR refuse to produce documents that they know to exist, the instructions contained in the Information Request explain the steps they must take. There is no need for a discussion with the Commission of the Information Request. It is clear that H&H and GLR are attempting to slow and narrow the Commission's inquiry.

### **III. The STA Should Not be Extended**

The Request for Extension of Time highlights the continuing fundamental and irreparable injury to CSO caused by this proceeding. CSO is injured every day that H&H, GLR and Phoenix are broadcasting over XEWW-AM pursuant to an unlawfully issued STA. The Request for Extension of Time is an attempt to slowdown the Commission's review of this unlawful

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received it in the mail. While USPS has its issues, it rarely fails to deliver a letter in less than 10 days.

operation. CSO has been attempting to bring to the Commission's attention the many reasons why this unlawful operation must not be extended.<sup>4</sup> As CSO is seeking to get the Commission to order the cessation of this unlawful operation, this request is similar to a request for a stay of Commission action.

In *Rates for Interstate Inmate Calling Services*, 31 FCC Red. 10936 (WB 2016),<sup>5</sup> the Commission set out the four parts of the test to obtain a stay: (1) Has the petitioner shown that it is likely to prevail on the merits? (2) Has the petitioner shown that without such relief, it will be irreparably injured? (3) Would the issuance of a stay substantially harm other parties interested in the proceedings? (4) Where lies the public interest?<sup>6</sup> Applying the Commission's test to this case demonstrates clearly that the Commission should: (1) deny the Request for Extension of Time, and (2) deny the Request to Extend the STA.

First, the likelihood of CSO demonstrating that the underlying Permit Application should not be granted is very high. Over the course of this proceeding CSO has demonstrated that:

1. There has been an unauthorized transfer of control of the Permit. This demonstrates that H&H and GLR have violated the Communications Act and thus cannot be trusted to comply with the Act going forward.<sup>7</sup>
2. The STA was unlawfully granted, because it failed to provide the public thirty-days' notice of the STA application, and failed to limit the STA to provide programming that is "only special events not of a continuing nature." As the original STA was unlawfully granted, it cannot be lawfully extended.<sup>8</sup>

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<sup>4</sup> On January 29, 2019 CSO filed its "Opposition to Special Temporary Authority Extension and on February 19, 2019, CSO filed its "Supplement to Opposition to Special Temporary Authority Extension," setting forth the reasons for denial of the extension of the STA.

<sup>5</sup> The Commission follows the test set forth in *Wash. Metro. Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841 (D.C. Cir. 1977).

<sup>6</sup> 31 FCC Red 10936, par. 9.

<sup>7</sup> Supplement to Opposition to Special Temporary Authority Extension at 6.

<sup>8</sup> Opposition to Special Temporary Authority Extension at 4-7. Supplement to Opposition to Special Temporary Authority Extension at 2-5.

3. It is apparent from the available evidence that H&H is a front for Phoenix Television, which is controlled by the People's Republic of China ("PRC"), and the programming that is being broadcast is presented as a form of propaganda for the PRC.<sup>9</sup>
4. Numerous federal agencies and other authorities have described the type of programming in which Phoenix Television is engaged as a threat to national security.<sup>10</sup>
5. Phoenix Television has been shown previously to attempt to manipulate the ownership and operation of U.S. broadcast facilities for the purpose of providing propaganda for the PRC.<sup>11</sup>
6. A former News Director for Phoenix Television has provided CSO with a declaration describing the propaganda activities of the PRC directed through Phoenix Television.<sup>12</sup>
7. The Foreign Agents Registration Act requires H&H, GLR and Phoenix Television to register as foreign agents.<sup>13</sup>
8. H&H, GLR and Phoenix Television are required to seek approval of the Committee on Foreign Investment in the United States.<sup>14</sup>
9. XEWW-AM causes interference to two U.S. radio station authorizations.<sup>15</sup>

Given this list of unlawful and/or improper actions, CSO has demonstrated that the Permit should not be granted, and CSO would have a high degree of probability of succeeding on the merits of having the Permit Application denied by the Commission. If the Commission were to grant the Permit Application despite all of this evidence, it would be reversible error.

Second, CSO is suffering irreparable injury every day that H&H, GLR and Phoenix Television continue their unlawful broadcasts. CSO, as a noncommercial, low power FM

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<sup>9</sup> Supplement to Petition to Deny, filed September 4, 2018, at 11-21; Reply to Opposition to Petition to Deny, filed September 11, 2018 at 6-12; Reply to Response to Unauthorized Filings, filed October 17, 2018, at 9-20.

<sup>10</sup> Petition to Deny, filed August 8, 2018, at 4-8; Supplement to Petition to Deny, filed September 4, 2018, at 3-11; Reply to Response to Unauthorized Filings at 4-9.

<sup>11</sup> Supplement to Petition to Deny at 15-16; Reply to Response to Unauthorized Filings at 10-11.

<sup>12</sup> Reply to Opposition to Petition to Deny at 10-12 and Exhibit 1.

<sup>13</sup> Supplement to Petition to Deny at 17-18.

<sup>14</sup> Supplement to Petition to Deny at 18-19.

<sup>15</sup> Supplement to Petition to Deny at 22-24 and Exhibits 1-3.

station, competes with XEWW-AM for listeners. For CSO to survive, it must encourage listeners and other potential donors to make donations to the station. With its vastly more powerful signal, XEWW-AM has the potential to draw listeners and potential donors away from listening to CSO's station. CSO has no remedy at law or in equity to be compensated for damages sustained as a result of the unlawfully granted STA.

Third, the Commission must ask whether the issuance of a stay would substantially harm other parties interested in the proceedings. The other interested parties are H&H, GLR and Phoenix Television. As has been demonstrated above, these parties are benefiting from consummating a transfer of control before the Commission authorized that transfer and from utilizing an unlawfully granted STA. These parties have no reasonable expectation that they should be allowed to continue their unlawful operation. Thus, the potential harm to those parties, which would be the termination of the STA, is an appropriate result for the unlawful operation.

Fourth, the Commission must ask, where lies the public interest? The above discussion clearly demonstrates that H&H, GLR and Phoenix Television are engaged in an unlawful operation, which unfortunately has been facilitated by the Commission's improvident granting of the STA and its failure to declare it now void. The public interest can never be served by the Commission allowing an unlawful operation to continue. The public interest is served by proper execution of the Commission's statutory authority. In this case, that requires the denial of the Request for Extension of Time, denial of the Request to Extend the STA, and denial of the transfer of the Permit.

### **III. Conclusion**

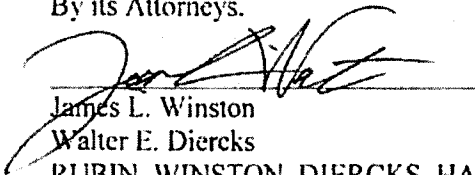
CSO suffers irreparable injury each and every day that the unlawful operation of H&H and GLR continues. That unlawful operation has extended almost eight months already. The

Commission is correct to seek the additional information specified in the Information Request. However, as CSO has demonstrated, the STA should not be extended while H&H and GLR respond to the Information Request. This is especially true now that H&H and GLR are attempting to drag the timing of this proceeding out even further and to limit the Commission's inquiry into exactly what they are up to. Given this unlawful operation, H&H and GLR should not be granted an extension of time to respond to the Information Request. However, if the Commission grants the extension of time, the Commission should not extend the STA.

Respectfully submitted,

**CHINESE SOUND OF ORIENTAL AND  
WEST HERITAGE**

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March 4, 2019

**CERTIFICATE OF SERVICE**

I, Sheree Kellogg, do hereby certify that I sent via U.S. mail (except where indicated), on this 4th day of March, 2019, copies of the foregoing OPPOSITION TO REQUEST FOR EXTENSION OF TIME to the following:

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